

This record is a partial extract of the original cable. The full text of the original cable is not available.

280915Z Feb 01

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ACTION AF-00

INFO	LOG-00	NP-00	AID-00	AMAD-00	ACQ-00	CIAE-00	DINT-00
	DODE-00	DOTE-00	SRPP-00	DS-00	EB-00	EUR-00	FAAE-00
	FBIE-00	VC-00	H-01	TEDE-00	INR-00	IO-00	L-00
	VCE-00	AC-01	NSAE-00	OIC-02	OMB-01	OPIC-01	PA-00
	PM-00	PRS-00	ACE-00	P-00	SP-00	SSO-00	STR-00
	TRSE-00	USIE-00	PMB-00	DSCC-00	PRM-01	DRL-02	G-00
	NFAT-00	SAS-00	SWCI-00	/009W			

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FM AMEMBASSY HARARE
TO SECSTATE WASHDC IMMEDIATE 8304
INFO NSC WASHDC IMMEDIATE
SOUTHERN AFRICAN DEVELOPMENT COMMUNITY
AMEMBASSY NAIROBI

C O N F I D E N T I A L HARARE 000861

SIPDIS

NSC FOR SENIOR AFRICA DIRECTOR JENDAYI FRAZER

LONDON FOR CHARLES GURNEY

PARIS FOR BISA WILLIAMS

NAIROBI FOR TERRY PFLAUMER

PASS USAID FOR AFR/SA - C. PALMA

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PASS USTR FOR ROSA WHITAKER

E.O. 12958: DECL: 02/28/11
TAGS: [PGOV](#) [PHUM](#) [KDEM](#) [PINS](#) [PINR](#) [ZI](#)
SUBJECT: SUPREME COURT CHIEF JUSTICE FIGHTS BACK

REF: (A)HARARE 766, (B)HARARE 694, (C) HARARE 644

CLASSIFIED BY CHARGE D'AFFAIRES EARL M. IRVING FOR
REASONS 1.5 (B) AND (D).

11. (SBU) IN A DRAMATIC, ELEVENTH HOUR TWIST TO THE SAGA OF THE ZIMBABWEAN JUDICIARY, CHIEF JUSTICE ANTHONY GUBBAY MADE PUBLIC HIS INTENTION TO STAY ON THE JOB. IT WAS EARLIER UNDERSTOOD THAT THE CHIEF JUSTICE WOULD WRAP UP HIS AFFAIRS AT THE BENCH ON FEBRUARY 28, AT WHICH TIME HE WOULD TAKE FOUR MONTHS' LEAVE AND OFFICIALLY RETIRE AT THE END OF JUNE. ON FEBRUARY 27 RUMBLINGS THAT THE CHIEF JUSTICE MIGHT NOT GO QUIETLY PROMPTED MINISTER OF JUSTICE, LEGAL, AND PARLIAMENTARY AFFAIRS PATRICK CHINAMASA TO ANNOUNCE THAT THE GOVERNMENT WOULD GIVE THE CHIEF JUSTICE FOUR MONTHS' PAY, MAKING HIS RETIREMENT EFFECTIVE AT MIDNIGHT ON FEBRUARY 28 AND ORDERED HIM TO VACATE HIS OFFICIAL RESIDENCE BY MARCH 9. CHINAMASA ESSENTIALLY TRICKED GUBBAY INTO "RESIGNING" AHEAD OF HIS MANDATORY RETIREMENT DATE IN APRIL 2002 (REF C). THE CHIEF JUSTICE NEVER PUBLICLY ACKNOWLEDGED HIS AGREEMENT TO DO SO.

12. (C) SPEAKING TO CHARGE ON FEBRUARY 28, THE CHIEF JUSTICE SOUNDED TIRED AND DEPRESSED. HE HAD PRACTICAL
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MATTERS TO ATTEND TO, SINCE SHORTLY HE WILL LOSE HIS OFFICIAL RESIDENCE, OFFICIAL VEHICLE AND A SUBSTANTIAL PORTION OF HIS INCOME. HE REPORTED THAT HE WAS CONSULTING A TEAM OF LAWYERS WITH RESPECT TO THE CASE HE WOULD MOUNT TO CHALLENGE THE GOVERNMENT'S UNCONSTITUTIONAL ACTION IN REMOVING HIM FROM OFFICE. HE THOUGHT THE PRESIDENT WOULD SWEAR IN A SUBSTANTIVE CHIEF JUSTICE ON MARCH 1. WHILE HE THOUGHT HE HAD A GOOD CASE AGAINST THE GOVERNMENT, GUBBAY WAS, NEVERTHELESS, REALISTIC: "THEY'LL NEVER REINSTATE ME AS CHIEF JUSTICE OR CANCEL THE APPOINTMENT OF THE ACTING CHIEF JUSTICE."

13. (C) COMMENT: IN AN EARLIER CONVERSATION WITH CHARGE, GUBBAY MADE CLEAR HIS VIEW THAT THE GOVERNMENT COULD NOT APPOINT AN ACTING CHIEF JUSTICE TO REPLACE HIM WHILE HE WAS ON LEAVE, AND THAT IS THE CRUX OF HIS ARGUMENT IN FIGHTING BACK. GUBBAY NOW APPEARS DETERMINED TO STAY UNTIL APRIL 2002, WHETHER OR NOT, IN DOING SO, HE PROVOKES A CONSTITUTIONAL CRISIS. FOR ITS PART, THE GOVERNMENT SEEMS DETERMINED TO IGNORE THE CONSTITUTIONAL REQUIREMENTS FOR REMOVING A CHIEF JUSTICE AND PLANS TO

SEND GUBBAY PACKING ON MARCH 1, AN ACTION WHICH HAS NO BASIS IN LAW. A NUMBER OF INTERLOCUTORS HAVE TOLD US RECENTLY THAT THE GOVERNMENT'S INTENTION IS TO REPLACE GUBBAY WITH PRO-ZANU-PF JUDGE PRESIDENT OF THE HIGH COURT GODFREY CHIDYAUSSIKU. CHIDYAUSSIKU WILL THEN RECOMMEND, AS THE CONSTITUTION REQUIRES, THAT A TRIBUNAL BE FORMED TO INVESTIGATE THE "MISCONDUCT" OF THE REMAINING FOUR SUPREME COURT JUSTICES. THE GOVERNMENT'S ULTIMATE OBJECTIVE IS OSTENSIBLY THE REPLACEMENT OF GUBBAY'S FOUR COLLEAGUES WITH JURISTS WILLING TO LOOK
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THE OTHER WAY AS PRESIDENT MUGABE AND HIS CRONIES RUN ROUGHSHOD OVER THE SPIRIT IF NOT THE LETTER OF THE LAW.
END COMMENT.

IRVING

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